

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES JASO)	
Claimant)	
VS.)	
)	
BOEING COMPANY)	Docket No. 1,002,433
Respondent)	
AND)	
)	
INS. CO. STATE OF PENNSYLVANIA & KEMPER INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the March 29, 2002 preliminary hearing Order of Administrative Law Judge Jon L. Frobish. Claimant was denied medical care for his left knee after the Administrative Law Judge found that claimant's left knee condition resulted from exercise performed at home, rather than his employment with respondent.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment to his left knee?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury to his right knee in March 2001 while performing work on the stud beam job with Boeing. This required that claimant be on his knees for several hours per day. Claimant began developing problems in his right knee, advised Central Medical and was provided medical treatment. There were no left knee complaints at that time.

Claimant, a 55-year-old employee of respondent, exercised regularly. This exercise regimen included putting in five miles on the treadmill every other day. As a result of his right knee problems, claimant was advised by the doctor to discontinue the treadmill. Claimant did not do the treadmill for several months.

In early November 2001, claimant again exercised on the treadmill for one day. He suffered no immediate onset of pain. However, the next morning he awoke with pain and swelling in his left knee. These are the first documented symptoms in claimant's left knee. Claimant alleges that he had prior problems with his left knee, but sought no medical care to the left knee before the November incident.

Claimant sought treatment from his personal physician, Arthur F. Windholz, M.D., of Preferred Medical Associates in Wichita, Kansas, on November 6, 2001. However, Dr. Windholz was not available, and claimant was examined by Bruce E. Barclay, M.D. Claimant advised Dr. Barclay that he was running on a treadmill and, the next morning, experienced pain and swelling in the knee. There is no mention in the November 6, 2001 medical report of any work connection to this left knee problem.

Claimant was advised to ice the knee and was provided pain medication.

Claimant was next examined on December 11, 2001, this time by Dr. Windholz. Claimant again had left knee complaints after jumping rope the week before at home. Claimant advised Dr. Windholz that his knee improved after his examination by Dr. Barclay and the use of pain medication. However, after jumping rope, he again experienced pain and swelling in the knee. Again there is no mention of any work-related connection to these symptoms.

Claimant was referred for additional treatment to orthopedic surgeon Duane A. Murphy, M.D., on December 31, 2001. Dr. Murphy was advised of the treadmill activities and onset of pain in the left knee, but was not told of any work-related connection to these activities. Dr. Murphy diagnosed a tear in claimant's medial meniscus and suggested surgery if claimant showed no improvement with conservative treatment.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

Claimant testifies to ongoing symptoms in his left knee after the March 2001 injury to his right knee. However, claimant sought no medical care until after the treadmill incident in November and the rope jumping accident in December of 2001. Even though claimant was treated by Dr. Windholz and Dr. Barclay on several occasions between the March and November dates, claimant failed to mention any ongoing, work-related

problems with his left knee. The only mention in the medical records of any injury to claimant's left knee deals with non-work-related circumstances.

The Board finds based upon the evidence that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment with respondent to the left knee.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated March 29, 2002, denying claimant benefits to the left knee should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director